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B.H.C.

ANCESTOR-WORSHIP

AND

JAPANESE LAW.

BY

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To VIND
Carpenter

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CONTENTS.

INTRODUCTION

PART I.

ANCESTOR-WORSHIP IN GENERAL. Page.

- § 1. THE ORIGIN OF ANCESTOR-WORSHIP. 4
- § 2. ANCESTOR-WORSHIP AS THE ORIGIN OF MAN'S
SOCIAL LIFE. 8

PART II.

ANCESTOR-WORSHIP IN JAPAN.

- § 1. THREE KINDS OF ANCESTOR-WORSHIP. 12
- § 2. THE WORSHIP OF IMPERIAL ANCESTORS. 15
- § 3. THE WORSHIP OF CLAN-ANCESTORS. 21
- § 4. THE WORSHIP OF FAMILY-ANCESTORS. 26

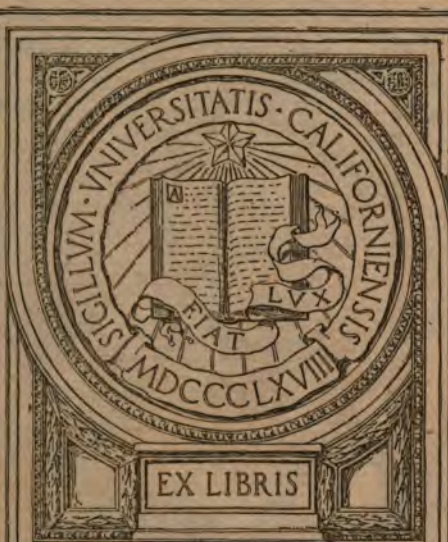
PART III.

ANCESTOR-WORSHIP AND LAW.

- § 1. THE GOVERNMENT. 34
- § 2. THE CONSTITUTION. 36
- § 3. THE PEOPLE. 39
- § 4. THE HOUSE. 41
- § 5. MARRIAGE. 48
- § 6. DIVORCE. 53
- § 7. ADOPTION. 56
- § 8. THE DISSOLUTION OF ADOPTION. 66
- § 9. SUCCESSION. 68

APPENDIX.

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PART I.

ANCESTOR-WORSHIP IN GENERAL.

§ I. THE ORIGIN OF ANCESTOR- WORSHIP.

The origin of Ancestor-worship has been ascribed by many eminent writers to the "*dread of ghosts*";* and the sacrifices are said to have been made to the souls of ancestors for the purpose of *propitiating* them. With the greatest deference due to these writers, I cannot persuade myself to accept this view. It appears to me more correct to attribute the origin of Ancestor-worship to a contrary cause. It was the *love* of ancestors, not the *dread* of them, which gave rise to the custom of worshipping and making offerings of food and drink to their spirits. I cannot understand why a primitive people, who must have loved their parents in their life-time, should have experienc-

* Sir John Lubbock's *Origin of Civilization* 4th ed. p. 318; Jhering's *Vorgeschichte der Indoeuropaer*, s. 59; Fustel de Coulange's *La Cité Antique* ch. II.

ed fear of them after their death. Respect for their parents may, in some cases, have become akin to *awe*, yet it was *love, not dread*, which caused this feeling of awe. A Chinese philosopher, Shiu-ki, (朱熹) accurately summarises the origin of Ancestor-worship when he says in his "Book of House-Ceremonies" (家禮) that "the object of worship is nothing else than performing all that is dictated by a *feeling of true love and respect*" (凡祭主於盡愛敬之誠而已), while the late Professor *Kurita* (栗田寬) begins his book on "The Rituals of Worship" (祭典私攷) with these words :- "Who, endowed with life in this world, has not a mind to honour his parents? Who, honouring his parents, does not reverence his ancestors? Who, honouring parents and reverencing ancestors, is not prompted to follow the dictates of affectionate sentiment by offering sacrifices to their spirits? This is the outcome of the faculty of intelligence that is implanted in human nature, and through it arose the ceremonies of offering sacrifices to spirits from the Age of the Gods." He further continues :- "Those who are left behind in this world by their parents feel pangs of grief in their hearts as months and years pass away. When the flowers begin to blossom in the Spring, when trees and grasses put forth their luxuriance in the Summer, when insects murmur and sing in the

Autumn evenings, and when the Winter brings its dews and frosts, everything they see and hear, stirs up a feeling of sorrow, and reminds them of bygone days when their parents walked the earth; and to their inability to forget their parents is due the practice of offering them food and drink. Thus, the custom of making sacrifices to spirits finds its origin in human nature." In a like manner Mr. *Junjiro Hosokawa*, (細川潤次郎) in his "Lectures on National Festival Days," (祝祭日講話) explains the source of the festivals set apart for sacrifice to the Imperial Ancestors.

The writers who attribute the origin of Ancestor-worship to "*the dread of ghosts*" and to "*ghost-propitiation*" fail to discriminate between ghosts which are to be *dreaded* and those which are to be *respected*. Ghosts can be divided into *two* separate classes, those that compel *fear* and those that inspire *love* and *respect*. The ghosts of enemies or of those that have met an unnatural death belong to the former; and sacrifices are sometimes made to their spirits for the purpose of propitiating them. But the ghosts of ancestors belong to the latter class; and sacrifices are made to them, and their spirits are worshipped, as a result of love and respect which their descendants feel towards them. This practice arises out of the natural impulse of kinsmen to provide their dead

relatives with food, drink and clothing as in the days of their life (祭如在). Confucius says in the "Book of Medium" (中庸) that "it is the highest filial piety to serve the dead as they would serve the living, and to serve the departed as they would serve the present." (事死如事生, 事亡如事存, 孝之至也) We celebrate the anniversary of our ancestors, pay visits to their graves, offer flowers, food and drink, burn incense, and bow before their tombs entirely from a feeling of love and respect for their memory, and no question of "dread" enters our minds in doing so. Moreover, in the records and traditions of our country, there is nothing which suggests that ancestors were worshipped with a view to propitiating their souls.

The theory of the "dread of ghosts" and "ghost-propitiation" seems absolutely unnatural so far as the worship of ancestors is concerned; and, however strange the expression may sound to Western ears, it would be more accurate to assert that it was the "*Love of Ghost*" which gave rise to the custom of Ancestor-worship.

§ 2. ANCESTOR-WORSHIP AS THE
ORIGIN OF MAN'S SOCIAL LIFE.

What was the bond which originally united men into a homogeneous social life? At the present time, there is a decided tendency on the part of men to form themselves into communities with the object of attaining collectively some *common end*. Some establish religious congregations in support of a common creed; some found scientific associations for the acquirement of common knowledge; others found commercial corporations for their mutual benefit; while others again group themselves into political parties with the object of winning recognition for their particular political convictions. The number of social communities is steadily increasing and their influence becomes more and more widespread with the progress of civilization. Every day, men are becoming more alive to the advantages of co-operation and the benefits arising from union in every branch of life. The sphere of these social groups even shows signs of overstepping the boundaries of states and the limits of races, and in these brotherhoods of men occupying a position in the higher stages of civilization, there is always to be found certain *conscious aims* which form the bond of their union.

But primitive men were ignorant of the advantages resulting from combination, and moreover, those virtues which are essential to the maintenance of society were not yet developed among them. The initial bond of union among primitive men must, then, be sought for in some *unconscious force*, and there can be little doubt that it had its origin in the ties of *consanguinity*. But the sphere of love amongst kinsmen is *limited in extent*, and there must have been, therefore, some other factor that acted as the centripetal force which drew distant relatives together and bound them into a community. *That factor was Ancestor-worship*. The worship of common ancestors, and the ceremonies connected therewith, maintained the semblance of a common descent amongst large numbers of widely scattered kinsmen who were so far removed from one another that they would, without this link, have fallen away from family intercourse. As the sentiment of consanguinity, which has been shown to have been the only bond of union amongst primitive men, grew looser by the wider dispersal of the ever-increasing members of a family, the necessity became greater to weld together the various units of kindred lineage by means of the worship of a common progenitor, in order that the primitive group might grow up into a homogeneous community. Now, if the primary

bond of union was the tie of blood, and if the tie of blood means the *extension of sympathy and love* to distant kinsmen, the explanation which has been given of the origin of Ancestor-worship seems to accord better with the effect of this practice, than does the theory of the "dread of ghosts" or "ghost propitiation."

The question whether Ancestor-worship is *an universal institution*, that is to say, whether all races of mankind have, at some time or another, passed, or must pass, through the stage of this worship, is one the solution of which cannot be lightly attempted. Personally, I cannot conceive how the human race could have arrived at its present state of social and political life without at first experiencing the influence of Ancestor-worship. M. Fustel de Coulanges in his brilliant work "La Cité Antique" asserts that the custom existed, at one time, both in Greece and in Rome, and the learned work of Dr. Hearn, entitled "The Aryan Household" shows that Aryans were an ancestor-worshipping race; while most of the recent investigations of historians and sociologists, as well as traveller's accounts of the manners and customs of primitive peoples prove that the worship of deceased ancestors is practised by a very large proportion of mankind. This seems to point to the conclusion that

all races practise it in the infancy of their development, and that it was the first step towards the inauguration of social life on a wide basis.



PART II.

ANCESTOR WORSHIP IN JAPAN.

I will now proceed to describe the present condition of Ancestor-worship in Japan. It was the primeval religion of the country from the earliest time of our history which dates back more than two thousand five hundred years; and it is universally practised by the people at the present moment. As has already been pointed out at the commencement of this essay, neither the introduction of Chinese civilization, the spread of Buddhism nor the influence of European civilization have done anything to shake the firm-rooted custom of the people.

§ I. THREE KINDS OF ANCESTOR-WORSHIP.

There are two sacred places in every Japanese house; the *Kamidana* (神棚) or "god-shelf" and the *Butsudan* (佛壇) or "Buddhist altar." The first-named is the Shinto altar which is a plain wooden shelf. In

the centre of this sacred shelf is placed a Taima or O-nusa (great offering) (大麻) which is a part of the offerings made to the Daijingū of Isé (伊勢大神宮), or the temple dedicated to Amaterasu Omi-Kami (天照皇大神) the *First Imperial Ancestor*. The Taima is distributed from the Temple of Isé to every house in the Empire at the end of each year and is worshipped by every loyal Japanese as the representation of the First Imperial Ancestor. On this altar the offering of rice, saké (liquor brewed from rice), and branches of sakaki-tree (*Cleyera japonica*) are usually placed, and every morning the members of the household make reverential obeisance before it by clapping hands and bowing; while in the evening, lights are also placed on the shelf. On this shelf is placed, in addition, the charm of Ujigami (氏神) or the *local tutelary god* of the family, and, in many houses, the charms of the other Shinto deities also.

In a Shinto household there is a second god-shelf or Kamidana, which is dedicated exclusively to the worship of *the ancestors of the house*. On this second shelf are placed cenotaphs bearing the names of the ancestors, their ages, and the dates of their death. These memorial tablets are called "Mitama-shiro" which means "representatives of souls," and they are usually placed in small boxes shaped like Shinto shrines,

Offerings of rice, saké, fish, sakaki-tree and lamps are made on this second shelf as on the first.

In the Buddhist household there is, in addition to the Kamidana, a Butsudan on which are placed cenotaphs bearing on the front posthumous Buddhist-names, and on the back the names used by the ancestors during their life-time. The cenotaph is usually lacquered and is sometimes placed in a box called "Zushi" (厨子), while family-crests are very often painted both on the tablet and on the box. Offering of flowers, branches of shikimi-tree (*Illicium religiosum*), tea, rice and other vegetable foods are usually placed before the cenotaphs, while incense is continually burnt and in the evening small lamps are lighted. The Butsudan take the place of the second god-shelf of the Shinto household, both being dedicated to the worship of family ancestors.

From the foregoing brief description of the sacred altars of a Japanese household, it will be seen that there are *three kinds of Ancestor-worship* in vogue; namely, the worship of the First Imperial Ancestor by the people, the worship of the patron god of the locality, which, as I shall show anon, is the remains of the worship of clan-ancestors by clansmen, and the worship of the family-ancestors by the members of the household.

§ 2. THE WORSHIP OF IMPERIAL ANCESTORS.

The first of the three kinds of Ancestor-worship, namely homage to the Imperial Ancestors, and especially to the first of them, Amaterasu O-Mikami, or "The Great Goddess of the Celestial Light," may be styled the national worship. The places set apart for religious exercises in honour of the First Imperial Ancestor are three in number, the Temple of Daijingu at Isé, the Kashikodokoro (賢所) in the Sanctuary of the Imperial Palace, and the Kamidana which is to be found in every house. In the two first-named, the Divine Mirror represents the Imperial Ancestor. This is the mirror which, according to old histories, Amaterasu O-mikami gave to Ameno Oshiomino Mikoto (天忍穗耳尊) accompanied by the injunction that her descendants should look upon that mirror as representing her soul and should worship it as herself. The Divine Mirror, called "Yata-no-Kagami (八咫鏡), was worshipped in the Imperial household down to the sixth year of the reign of Sujin (崇神) (B. C. 92) when the Emperor, fearing lest familiarity with it might engender disrespect, ordered Princess Toyokuwa-irihime-no-Mikoto (豐鍬入姫命) to set up a temple in the village of Kasanui (笠縫) in the province of Yamato

(大和), and decreed that the mirror should be housed and worshipped there. This temple was afterwards removed to various localities, until finally Isé was chosen as its permanent site. The Emperor further caused a duplicate of the mirror to be made and placed in the Sanctuary of the Palace in order that he and his descendants might worship it as heretofore. Thus the true mirror is now in the Temple of Daijingū at Isé, and the duplicate in the Temple of Kashiko-Dokoro in the Imperial Sanctuary. At the present time not only does every loyal Japanese worship Daijingū in his own house, but many look upon it as a duty to make a pilgrimage to Isé, or "Isé-Mairi" (伊勢參宮) at least once during a life-time. Thousands of people, high and low, rich and poor, yearly throng the temple of Daijingū from all parts of the country, and offer the holy music and dance called "Dai-dai-Kagura" (大々神樂) in honour of the Imperial Ancestor. There is a curious custom, which, however, has somewhat declined in recent years, known as "Nuké-Mairi," (抜参り) or the "Stolen Pilgrimage," in accordance with which shop-boys and village youths set out on a secret pilgrimage to Isé without obtaining the permission of their respective masters or parents. It may be mentioned, in passing, that these disciplinary lapses are not usually punished as such acts would be under

ordinary circumstances. These pilgrimages are frequently undertaken without any provision whatever for the journey, but as the youthful pilgrims are easily distinguishable from ordinary beggars, there are plenty of kind-hearted persons ready and willing to offer them food, money and, sometimes, even shelter.

In the Sanctuary of the Imperial Palace there are three temples, Kashiko-Dokoro (賢所), Kwōrei-Den (皇靈殿) and Shin-Den (神殿). Kashiko-Dokoro occupies the central position where the Divine Mirror is placed, and is dedicated to the worship of the First Imperial Ancestor. Kwōrei-Den stands to the west of Kashiko-Dokoro and is dedicated to the worship of all the Imperial Ancestors since Jimmu Tennō (神武天皇), the first Emperor and the founder of the Empire. The third temple, Shinden, stands to the east of Kashiko-Dokoro, and serves to honour all the other deities.

At the present time, *eleven* "Great Festival Days" (大祭日) are observed as National Holidays. All these, with the exception of two, one of which is the birthday of the Emperor and the other the Banquet of the New Year, relate to the worship of Imperial Ancestors. The first holiday is New Year's Day on which the Emperor performs the ceremony of "Shihō-hai" (四方拜) or "Worshipping in Four Directions."

This ceremony takes place in the Palace at four o'clock in the morning of the first day of the year. He begins by worshipping the First Imperial Ancestor in the direction of the west, and afterwards in the direction of the respective graves of the First Emperor Jimmu Tennō, the Imperial father Komei Tennō (孝明天皇) and the other deities.

At the termination of this ceremony the Emperor and the Empress receive New Year's congratulations from the members of the Imperial family, foreign ministers, officials, nobles and other dignitaries; and thus the first ceremony of the court may be said to begin with the worship of Imperial Ancestors.

The Second Festival takes place on the 3rd. of January, and is called "Genshi Sai," (元始祭) meaning "sacrifice to the origin." On this occasion the Emperor personally performs the sacra in the three temples of the Sanctuary, attended by the members of the Imperial Household, and all the high officials of Shin-nin (親任) and Chioku-nin (勅任) rank. In the afternoon, the nobility and all officials down to those of the lowest rank attend the Sanctuary to worship the three temples.

On the 5th. of January occurs the third National Festival which is called Shinnen Yenkwai (新年宴會) or "The Banquet of the New Year." This is one of

the two National Holidays which has no relation to Ancestor-worship.

The fourth Festival Day is "Komei Tennō-Sai" (孝明天皇祭). This is the anniversary of the death of the August Father of the Emperor and is observed on the 30th. of January. The ceremonies on this and other Festival Days being similar, it is unnecessary to give any further description.

February 11th, is the date of the fifth Festival called "Kigen-Setsu" (紀元節) or the anniversary of the accession of the First Emperor and the foundation of the Empire. After the ceremonies are performed at the Sanctuary, a grand banquet is given in the Palace to princes, foreign ministers, high officials and nobles.

The sixth Festival occurs on the 20th. of March, and is called "Shiunki Kwōrei-Sai" (春季皇靈祭) or "The Spring Sacrifice to the Spirits of Imperial Ancestors." This ceremony of worship is also performed both in Kwōrei-Den and Shin-Den by the Emperor in person attended by all the high officials of state.

The seventh Festival Day "Jimmu-Tennō-Sai" (神武天皇祭) is the 3rd. of April, which is devoted to the worship of Jimmu-Tennō, for this day is the anniversary of the death of the First Emperor.

The eighth Festival Day is "Shiuki Kwōrei Sai" (秋季皇靈祭) or "The Autumnal Sacrifice to the Spirits

of Imperial Ancestors ” which takes place on the 23rd. of September. This corresponds to the “ Spring Sacrifice ” and the ceremonies are nearly identical.

The 17th. of October is the date of the ninth Festival. This is called “ Shin-shō-Sai ” (神嘗祭) or “ Kan-namé-Matsuri ” and the principal ceremony consists in offering the first crop of the year to the First Imperial Ancestor. On this occasion also, the Emperor performs the ceremonies at the Sanctuary, besides the ceremony called “ Yō-hai ” or the “ Distant Worship ” of the First Imperial Ancestor at Isé. With the new crops “ The Sacrifice of the First Tribute ” or “ Nino-sakino-Nusa, ” (荷前幣) the offering of silk, is made. This is a relic of the ancient practice of selecting the best portion of the “ First Cargo ” of the taxes in kind, and offering it on the graves of Imperial Ancestors.

The 10th. Festival Day, “ Tenchō-Setsu, ” (天長節) is the birthday of H.M. the Emperor and is one of the two holidays which are not founded on the worship of Imperial Ancestors.

The 11th. and last is “ Shin-shō-Sai ” (新嘗祭) or “ Nii-Namé-no-Matsuri ” which takes place on the 23rd. of November. The chief feature is the offering of new crops to the Imperial Ancestors, but this festival will be more fully dealt with when I come to speak of the accession of the Emperor to the throne.

All the Festival Days are annually observed as national holidays. National flags representing the Rising Sun are hung from every house ; women don their best attire, and the streets are thronged with holiday makers ; while children go to their schools and assemble before the portraits of the Emperor and the Empress, and His Majesty's famous Speech on Education is read and explained to them by the school masters.

From the foregoing, it will be seen that the *worship of the Imperial Ancestors is the national worship.*

§ 3. THE WORSHIP OF CLAN-ANCESTORS.

The population of Japan was originally considered to have been divided into *three classes*, Shinbetsu (神別) the divine branch which consisted of the descendants of gods ; Kwō-betsu (皇別) or the Imperial branch which included the descendants of the Imperial families, and Ban-betsu (蕃別), or the foreign branch, comprising the descendants of naturalized foreigners. Each of these three branches was divided again into many clans, each section having a distinctive clan-name "Uji" (氏) or "Kabane" (姓). With regard to the

original signification of the words "Uji" and "Kabane" there is considerable divergence of opinions among Japanese scholars. Some maintain that the word came from "umi-chi" (生血) or "blood of birth;" others derive it from "izu" (出) or "origin;" while the claims of "uchi" (内) "house" also receive support in certain quarters (拾芥抄). As to the derivation of the word "Kabane," which was sometimes used to denote clan-names, almost equally divergent views exist. Some suggest "agamaye" (あがまへ) or "reverence" in view of the fact that the word was more usually employed to convey the meaning of a title of honour; others derive it from "kami hone" (神骨) or "god's bone," the word signifying that clan-name is like the bone of the ancestor which remains after his death; while not a few are in favour of applying its ordinary meaning, namely "corpse," because it is a corpse that descendants succeed. The late Professor Kurita, in his learned investigation into the subject of clans (氏族考), derived it from "Kabuné" (頭根) "the root" or "the stock", the word being employed to designate the root or stock from which descendants sprang. I have no desire, however, to involve myself in an etymological discussion as to the original signification of these words; nor is it within the scope of this paper

to do so. No matter which of these disputed derivations be the correct one, they one and all convey the idea of a certain *common ancestor*, and consequently of *community of blood*.

The word “uji” denoted the clan-name, or the common appellation of the descendants of the same ancestor, and sometimes the clan itself. The word “Kabane,” which was more usually employed to designate titles of honour, was also sometimes employed in the sense of a clan-name. In the course of time each “uji” or clan was subdivided into smaller clans, and hence arose the division of “uji” into “*Ō*-uji” (大氏) the “Great clan” and “*Ko*-uji” (小氏) the “Small clan.” Each “*Ō*-uji” consisted of a number of subordinate bodies, and usually certain words were added to great-clan names, in order to distinguish the sub-clans from the parent community; for example, “Nakatomi” (中臣) was a great-clan name, born by the descendants of Ame-no Koyane-no Mikoto (天兒屋根命), from which sprang the subdivisions “Nakatomi-no-Sakahito,” (中臣酒人) “Nakatomi-no-Miyatoko,” (中臣宮處), “Nakatomi-no-Oya” (中臣大家) etc.

Each clan has a clan-god or “Uji-gami” (氏神) who is the eponym of that particular community; thus, Kasuga (春日) is the famous “Uji-gami” of the Fujiwara clan

(藤原氏) which was one of the largest and most influential clans in Japan. In early times, it seems to have been customary to render homage every month to the clan-god at the house of each individual clansman (宅神祭); but afterwards this practice declined, and festivals in honour of the clan-ancestor were substituted, and these were held three times a year in the temple. All clansmen took part in the ceremony; and records still exist which show that court-officials were permitted to set out on a journey to attend the sacra of the clan-god, which were performed in the temples far away from the capital, without even first obtaining leave of absence. Sometimes lands were presented by the Emperors to the temples of clan-gods of high officials, in order to mitigate the heavy expense of festivals. The offerings submitted on the occasion of festivals consisted usually of food, drink and clothing. In order to give an idea of the nature of the oblations on these occasions, I will translate literally a portion of the prayers recited during the festival of the Fujiwara clan-god:—"and the offerings hereby most respectfully presented are divine treasures in the form of a mirror, a sword, a bow, a spear and a horse; as vestments, light cloth, shining cloth, soft cloth (silk), course cloth (hemp); the first-fruits from the tributes of different provinces; from among the things of the blue sea, the

broad-fin (large fish), narrow fin (small fish), weeds of the deep and weeds of the shore ; from among things of mountain and field, sweet herbs and pungent herbs ; and tall jars filled with saké and others things all piled up like a range of mountains. These things are proffered by A, the master of the sacra, as the grand offering, the peaceful offering and the full offering, and he reverently prays that the Divine Spirits may accept them peacefully." Sometimes sacred music and dances were also offered in addition to the various articles enumerated above.

The word "uji-gami" or clan-god is now used in another sense, namely in the sense of the local tutelary god or the patron-god of a man's birthplace or domicile. This change in the use of the word "uji-gami" from *clan-god* to *local tutelary god* possibly arose from the fact, that in early days clansmen usually lived together in the same locality, and erected a temple for the worship of their ancestral eponyms, with the result that the clan-god and the local patron-god meant one and the same deity. But subsequently, the means of communications gradually developed, and the members of the various clans began to disperse and to live in different parts of the country. Even now, it is no uncommon thing to find in the country villages the greater part of the inhabitants bearing the same family

name. Moreover, it will be shown presently that the administrative departments of the Empire from being *tribal* have gradually become local and *territorial*.

In all parts of the Empire, persons living within certain localities are designated “uji-ko” (氏子) or the children of the clan. They carry their children soon after they are born to the temple of the local patron-god for the first worship which is called “Miya-mairi” (宮參) and each “uji-ko” contributes towards the maintenance of the temples and the expenses of the festivals which are held in honour of “uji-gami” at least twice every year.

All these facts combine to show that the worship of “uji-gami,” or local patron-gods, is a relic of the worship of clan-ancestors.

§ 4 THE WORSHIP OF FAMILY-ANCESTORS.

The next point to be discussed is the worship of the Ancestors of a House. The occasions for the celebration of house-worship may be classed under *three categories*, namely, the *Sacrifice-days*, the *Sacrifice-months*, and the *Sacrifice-years*. The Sacrifice-day or “ki-ni-chi” (忌日) is the day in each month corresponding to the day of an ancestor’s death. For instance, if the

death occurred on the fifth day of a month, the “kinichi” would be celebrated on the fifth of every month. The Sacrifice-month or “shō-tsuki” (禊月) is the day of the month corresponding to the day and month of an ancestor’s death. Thus, if the death occurred on the fifth of September, the “shō-tsuki” would be observed on every fifth of September. The Sacrifice-year or “nen-ki” (年忌) is the day of the month in certain years, corresponding to the day of the month of the death of an ancestor, the ceremony of worship in connection with it usually taking place among Shintoists on the 1st, 5th, 10th, 20th, 30th, 40th, 50th, and 100th anniversaries. After the 100th year, the anniversary is usually celebrated every 50th year. Among Buddhists, these anniversary ceremonies are usually observed on the 1st, 3rd, 7th, 13th, 17th, 23rd, 27th, 33rd, 37th, 43rd, 47th, 50th, and 100th year, after which period they are held every 50th year as in the case of the Shintoists.

In accordance with an ancient custom, sacrifices are made and ceremonies of worship performed by Buddhists, after a man’s death, every seventh-day until the seventh seventh-day, that is the forty-ninth day from the date of death; these sacrifice days being respectively designated the “first seventh-day” (初七日) “second seventh-day” (二七日) and so on. Amongst Shintoists,

these Sacrifice-days are usually commemorated every tenth day after the death, and end with the fiftieth or hundredth.

As a rule, on "kinichi" or Sacrifice-days of each month, after the seventh seventh-day among Buddhists, and the fiftieth or hundredth day among Shintoists, only members of the family and near relatives take part in the proceedings; but on the occasion of "shō-tsuki" and "nenki," feasts are provided, and relatives and descendants of ancestors are invited to participate in the worship. In both the Shinto and Buddhist religions, priests officiate the ceremonies, but among Shintoists the religious services are held in their own houses, while among Buddhists they sometimes take place in the temples as well as in their own homes.

The respective rituals of worship differ somewhat in the Shintō and Buddhist religions, and there are also some variations observable in the rites of different Buddhist sects. Shintō offerings consist of saké, rice, fish, game, vegetables and fruits, for food and drink, and pieces of silk and hemp for clothing, while branches of sakaki-tree and flowers are also frequently offered. The priests who conduct the ceremony clap their hands before the altar, and the chief priest pronounces the prayer or "norito" (祝詞) the words of which vary on different occasions, although, at the

commencement of the recital the spirits of the ancestors are almost invariably informed that the head of the family, with other members and connections, are assembled for the purpose of celebrating the particular anniversary, reverently offering to the sacred soul "lucks of sea and mountain" (umi-no sachi (海之幸) yama-no-sachi (山之幸), meaning thereby fish, game etc), that the house is in a peaceful condition, and that the descendants are prosperous. The prayer usually ends with the supplication that the spirit may protect and watch over the family, and accept the offerings dutifully submitted. After this, each of the assembled party, commencing with the head of the house, takes a "Tamagushi" (玉串) or small branch of sakaki-tree, to which is attached a piece of paper representing "nigo-tayé" (和多閉) or fine cloth, places it on the altar and then claps hands and makes obeisances. With regard to the significance of the hand-clapping, three explanations have been given. Some consider it as a sign of *joy*, others as an *invocation*, and others again as a sign of *admiration*. The last named is the opinion of the late Professor Konakamura (小中村清矩) and is the most widely accepted explanation. At the termination of this ceremony, all the relatives are invited to a banquet, concerning which the late Professor Kurita in his treatise on the "Rituals of Worship"

writes :- “The relatives assembled partake of the sacred saké, which has been offered to the ancestor, and talk about his meritorious deeds, while each person present gives voice to a resolve not to degrade in any way the good name of the ancestor.”

We now pass to the ceremonies of the Buddhists. Their offerings usually consist of tea, rice, fruits, cakes and flowers, either artificial or natural, the most usual being lotus. Fish and meat form no part of the sacrifice because of the doctrine of abstinence from flesh, embodied in Buddha's commandment not to kill any animate being. Whether the ceremony takes place in the temple or in the house, priests officiate and recite sacred books. When it is performed in the temple, sacred music generally accompanies the prayer-recitals. The assembly in turn burn incense and prostrate themselves before the altar, the order of precedence being the same as in the case of Shintō worship. The feast which is held in the house on the preceding evening does not differ in its general features from that of the Shintoists, except that the food consists of vegetables only.

In addition to the ceremonies performed on the three occasions referred to, there are *three appointed times* in the course of a year, when people offer sacrifices to the spirits of ancestors both at home and at

the graves. These are the weeks respectively of the Spring and Autumnal equinox which are called "Higan," (彼岸) and the Festival of "Urabon-ye" (盂蘭盆會) or "Bon" which continues from the 13th till the 16th of July. In "Higan" the family graves are visited, and flowers and water offered upon the tombs. In "Urabon-ye," the Festival for the "Invitation of Spirits" is held in every Buddhist's house. On the day previous to the Bon-festival, markets called "Kusaichi" (草市) or "Bon-ichi" (盆市) are held in many places for the sale of articles used in the decoration of altars. On the 14th of July, visits to family graves and offerings of flowers and lanterns are made, and shelves are erected in the houses called "Shoryō-dana" (精靈棚) or "the shelf for the spirits" which are decorated with various kinds of vegetables, large lanterns called kirikodōrō (切籠燈籠) are also offered. In the evening of the 13th, the "mukai-bi" (迎火) or "Reception Fire" is kindled before the door of the house or in the garden; and in the evening of the 16th, "okuri-bi" (送火) or the "Farewell Fire" is lighted. During these four days, the spirits are supposed to come and stay in the house. Priests are invited to recite prayers, and many offerings of rice, water, fruits, cakes and vegetables are made on the Spirit-shelf, the most curious among the offerings being oxen made of egg-

plants and horses fashioned from white me'ons, the legs being represented by hemp-stalks. Elaborate rules regulate the nature of the offerings of this festival but it is unnecessary to dwell upon them here.

The extent of the sacrifices made on the occasion of the periodical services which I have described, and the number of priests who conduct the ceremony, as well as the size and decorations of the ancestral graves vary in accordance with the rank and fortune of the people. One of the most magnificent edifices in Japan is the temple of Nikko (日光) which is dedicated to the worship of Iyeyasu (家康), first Shōgun of the Tokugawa family. There is a well-known popular saying "Never say kekkō (splendid) until you see Nikkō." In the early part of the Tokugawa Shōgunate, one thousand priests took part in the ceremonies of worship on the occasions of "nenki" or the seventh yearly anniversaries of the ancestors of Shōgun, and recited one thousand sacred books every day, until they had completed the recitation of ten thousand volumes in ten days. Of course these festivals, which sometimes took place two or three times a year, entailed great expense to the treasury of the state, and also to the Feudal Nobles who were compelled to make contributions of rice and money. At the beginning of the 18th century, however, a new law was enacted, by

which the number of priests was limited to two or three hundred; the number of the sacred books to be recited to one thousand volumes and the duration of the festival to three or four days. This reform is said to have reduced the expense to one-tenth of the original amount. This fact helps to demonstrate the importance attached to the worship of ancestors.

The worship of ancestors is not limited only to the festival times mentioned. When a young student goes to Europe to pursue his studies, when a soldier sets out on a campaign, when an official is sent abroad on some government service, or when a merchant undertakes a long journey on business, he invariably visits the graves of his ancestors in order to take leave of them. When they live in places distant from their ancestral graves, they very often make long journies in order to visit the tombs and make sacrifices to them. In many Shintoist houses, the offerings of saké and sakaki-tree are continually made; and in Buddhist houses flowers are offered everyday and incense are continually burnt in Butsudan. In fact, the worship of the spirits of ancestors forms a part of everyday-life of the people.

PART III.

ANCESTOR-WORSHIP AND LAW.

§. I. THE GOVERNMENT.

I have been at some pains to describe the present state of Ancestor-Worship in Japan in order to show that even now, the social life of the people is greatly influenced by the practice. Now I come to the main subject of this paper ; namely, the relation of Ancestor-Worship to Japanese Law.

That the foundation of our government was the worship of ancestors is shown by the word "Matsurigoto" or "government" which means "*affairs of worship.*" The ceremony of "Seiji-hajime" (政事始) or the "Beginning of the Affairs of State," which takes place on the 4th of January, consists of the Emperor receiving from his ministers the report of the affairs of the Temple of Dai-jingū, the First Ancestor of the Emperor. Thus the business of our government may be said to begin every year with matters relating to worship. "Sai-sei Itchi" (祭政一致) or "the unity of worship and government" is an expression which was very commonly used by old writers on politics and government. Upon this principle, even after the

introduction of Chinese civilization in ancient times, and the great reform of the Taikwa (大化) era (645—649 A.D.) the Department of Divine Worship (神祇官) was given precedence over all other government departments, even over “Da Jō Gwan” or the Great Council of State which was afterwards reorganized and established as the Cabinet.

The most minute regulations with respect to rituals of worship are to be found in old law-books such as the Taiho Code (大寶令) and Yengi Shiki (延喜式); and all great affairs of state such as the promulgation of the Constitution, the declaration of war, the conclusion of peace, and the revision of treaties with foreign powers are usually reported to the Temple of the First Imperial Ancestor at Isé, and sometimes to the tombs of other Imperial Ancestors. Although the affairs of state-worship, which formerly belonged to the Department of Divine Worship, are now administered by bureaux of the Home Department and the Imperial Household, motions are brought forward in almost every session of the Diet to make representation to the government to revive the Department of Divine Worship. Thus, in Japan, as it was in China “The great affairs of State are Worship and War,” (左傳國之大事在祀與戎 Commentaries of Sa on the Spring and Autumn History of Confucius.)

§. 2. THE CONSTITUTION.

The present Constitution of the Empire of Japan was promulgated by the Emperor on the 11th of February 1889, that day being the National *Festival of Kigensetsu* or the anniversary of the foundation of the Empire by the First Emperor Jimmu Tennō (神武天皇). In the framing of this Constitution, Marquis Ito (伊藤博文), with many high officials, had been sent to Europe with the Imperial Commission to examine the constitutions of Western Countries, and most of the principles which find a place in the component elements of constitutional governments have been adopted, so far as they are consistent with the fundamental principles of the form of Imperial Government which existed from the beginning of the Empire. That fundamental principle is clearly stated in the 1st Article of the Constitution: "The Empire of Japan shall be reigned over and governed by *a line of Emperors unbroken for ages eternal.*" Marquis Ito, in his "Commentaries on the Constitution" (憲法義解 translated into English by Baron Miyoji Ito 伊東己代治), writes "The Sacred Throne of Japan is *inherited from Imperial Ancestors*, and is to be bequeathed to posterity; in it resides the power to reign over and govern the State". From this it will be seen that

the foundation of the Constitution is the worship of Imperial Ancestors, a fact which is definitely set forth in the Preamble of the Constitution which runs thus :—

“ Having, by virtue of the glories of our Ancestors, ascended the throne of a lineal succession unbroken for ages eternal; remembering that Our beloved subjects are the *very same* that have been favoured with the benevolent care and affectionate vigilance of Our Ancestors, and desiring to promote their welfare and give development to their moral and intellectual faculties; and hoping to maintain the prosperity and progress of the State, in concert with Our people and with their support We hereby promulgate a fundamental law of State to exhibit the principles, by which We are to be guided in Our conduct, and to point out to what Our descendants, Our subjects and their descendants are forever to conform. *The rights of sovereignty of the State, We have inherited from Our Ancestors* and We shall bequeath them to Our descendants. Neither We nor they shall in future fail to wield them, in accordance with the provisions of the Constitution hereby granted”.

In the course of the Imperial Speech on the occasion of the promulgation of the Constitution, His Majesty said that “ The *Imperial Founuder* of Our House, and

Our other *Imperial Ancestors*, by the help and support of the *forefathers* of Our subjects, laid the foundation of Our Empire upon a basis, which is to last for ever. That this brilliant achievement embellishes the annals of Our country is due to the glorious virtues of Our Sacred Imperial Ancestors, and to the loyalty and bravery of Our subjects, their love of their country and their public spirit". His Majesty further took an oath to the Imperial Ancestors at the Sanctuary of the Palace to observe the provisions of the fundamental law, the terms of the oath including the statements that the constitution was the "exposition of grand precepts for the conduct of the government, *bequeathed by the Imperial Founder of Our House and by Our other Imperial Ancestors*", and that the New Constitution was intended to "give clearness and distinctness to the instructions bequeathed by the Imperial Founder of Our House and by Our other Imperial Ancestors, in consideration of the progressive tendency of the course of human affairs, and in order to keep in line with the advance of civilization."

When Jimmu Tenno founded the Empire, and ascended the throne, the ceremony of coronation consisted in the worship of the Imperial Ancestors on the Hill of Torimi Yama (鳥見山). At the accession of every Emperor there is a ceremony called "Daijō-Sai"

(大嘗祭) or "Ōname-no-Matsuri," usually on the first Festival Day of Shinsho-Sai already referred to, in which the newly crowned Emperor offers the first fruits of the year to his Ancestors. Article xi of the Imperial House Law says "The ceremonies of Coronation shall be performed and Daijō-Sai shall be held at Kyoto." Article x of the same Law provides that "upon the demise of the Emperor, the Imperial heir shall ascend the Throne, and shall *acquire the Devine Treasures of the Imperial Ancestors.*" These Devine Treasures consist of the Mirror above spoken of, a sword and a precious stone which have been bequeathed by the First Imperial Ancestor, Amaterasu Ō-mi Kami, to her descendant as symbols of the Imperial power.

The foregoing statement of the facts relating to the Constitution of the Empire will be sufficient to show that the sovereignty of Japan is the heritage of Imperial Ancestors and that the foundation of the Constitution is Ancestor-worship.

§ 3 THE PEOPLE

I have already stated that the worship of Imperial Ancestors is our national worship. They are worshipped, not only because they are the ancestors of our

August Sovereign, but because they are the Sovereigns of our ancestors. Formerly, as I have said, the people of Japan were divided into three branches or "Three Bodies" (三體) and each branch was divided into many clans. Each individual subject had an "uji" or clan-name, which was the mark of descent from a certain ancestor. Each clan, whether great or small, had its chief, called "Uji-no-kami" (氏上) who was usually the eldest male descendant of the eponymous ancestor. He was obeyed and honoured by the clansmen as the representative of their common ancestor. He was the head of their worship, their leader in the time of war, and their governor in the time of peace. Small clansmen were governed by the "uji-no-kami" of the small clan, who was himself subject to the "uji-no-kami" of the great clan. The Emperor was the supreme authority over them and all the laws and proclamations of the Imperial Government were transmitted to the "uji-no-kami" of great clans who, in turn, transmitted them to the "uji-no-kami" of the small clans and thus each clan which was *a body founded on the community of blood and worship*, formed *an administrative division* of the country, corresponding to the present administrative divisions such as provinces, cities, towns, districts and villages. Since the great Reform of the Taika Era (大化), in spite of the fact that the clan system of

government continued for a long time afterward, the basis of administrative division of the country gradually changed from being *personal* to being *territorial*. As Dr Hearn very truly remarks in his "Aryan Household," the order of transition "was from kinship to neighbourhood."

§ 4 THE HOUSE

In the middle ages, clans began to gradually disintegrate and households took their place. It was only after the Restoration of 1868 that the house-system began to lose its force and that the individual, not the household, began to form the unit of state. This transition may be illustrated by the history of our *Law of Registration*. The development of this law can be divided into *three epochs*: 1st, the epoch of the *Clan-registration* (姓氏錄時代), 2nd, the epoch of *House-registration* (戶籍時代) and 3rd, the epoch of the *Personal-registration* (身分登記時代). In those early days when the clan formed the unit of state, it was of the utmost importance that each person's clan-name should be kept sacred. As only those who belonged to certain clans could fill high official positions or join the Imperial body-guard, and as several other privileges

were enjoyed by particular clans, attempts were often made to forsake original clans and surreptitiously adopt the names of some influential clans. In order to put a stop to these abuses an "ordeal of hot water" or "Kuga dachi" (探湯) was held in obedience to an Imperial proclamation in the 4th year of the Emperor Inkyo (允恭天皇) (415 A.D.) to test the truth or falsehood of the clan-names born by the people. This ordeal consisted in plunging the hand into hot water before the temple of a god, and it was claimed that those who had assumed false clan-names would suffer injury, whilst the innocent would escape unhurt. In the 5th year of the Era of Tempei Hōji, (天平寶字) (761 A.D.) an office called "Sen Shizoku Jo" (撰氏族所) was founded for the compilation of a clan-registry, and a commission was appointed which numbered amongst its members the most distinguished scholars of the time. The work of the commission was, however, not completed. Since this time, Imperial proclamations were frequently issued ordering all clans in the Empire to send their genealogical records (本系帳) to the government, in order that they might be included in the Imperial archives. It was ordered, that in those records the name of the first ancestor and also the name of the ancestor from whom the small clan branched out should always be given and the records

of those claiming to belong to noble clans had to be attested by the signature of the head of the whole clan. In the reign of the Emperor Saga (嵯峨天皇) in the 6th year of the Era of Konin (弘仁), "the Register of Clan-names" or "Seishi Roku" (姓氏錄) was compiled, a part of which is still in existence to-day. This Register consisted of 30 volumes and contained 1182 clan-names. In that year, "Kan Kei Jo" (勘系所) or the Bureau of Genealogical Investigation was established. The preservation of genealogical records and their accuracy were considered to be matters of the utmost importance in those times, and their loss or forgery used to supply abundant material to the writers of novels and dramas, just as the subject of the loss or forgery of wills is frequently resorted to by Western writers.

The introduction of "Ko-seki" (戶籍) House-Registry dates back as far as the 1st year of the Era of Taika (645 A.D.), when the great reform was made in the system of government. Although its introduction was earlier in date than the final compilation of the "Register of Clan-names," its historical order must come after that of the Clan-Registry, for the system of House-Registry has continued from that remote period down to the present time.

It was only in the 31st Year of Meiji (1898 A.D.)

that the history of our law of registration began to enter upon the third stage of the development. The present law, which was promulgated in 1898, and which replaced the previous law of 1871, still retains the name of "Koseki Hō" (戶籍法) or "the Law of House Registration," but the character of the law has undergone a change necessitated by the progress of the social condition of the country, for it provides for the registration of *individual status* or "Mibun-toki" (身分登記) as well as of house registration.

It is often asserted by writers who concern themselves with the early phenomena of society, that a family was the original unit of state and that the aggregation of families formed a clan. But this view seems to me to reverse the real order of development. It was the clan which was first *recognised by law* and which formed the unit of society. The family was included in the clan but did not yet possess separate existence in the eyes of the law. It was only by the gradual disintegration of the clan, that the family or house came to the fore, and began to form the unit of society. Thus, constituent element of a society becomes smaller and smaller, until it divides itself into an atom or individual.

From what has been stated relative to the development of the law of registration, it will be seen that

Japan is now in a state of transition. Until recently, a house was a corporation and a legal unit of the state. But ever since the Restoration of 1868, the family system has gradually decayed, until, at present, the house has entirely lost its corporate character. Formerly, it was the head of the family only who could fill an official position, serve in the army, and hold property. But with the reform in the system of government, the members of a house were permitted to fill public positions and with the reform of the law of military conscription, both head and members are liable to military duties; while with the progress of commerce and industry the younger members of the house were entitled to hold public bonds, stocks and shares, which the law now recognises as their separate property. Although the house has thus lost its corporate existence in the eyes of the law, it still, nevertheless, maintains its character as the unit of society. The new Civil Code which came into operation in 1898, allows members to secede from a household and establish a new "branch-house" with the consent of the head of the family (Art. 743 Civil Code); for the law recognises the tendency of social progress towards individualism, but, at the same time, it makes careful provision for the continuity of the house. The house is the *seat of Ancestor-worship*, and, therefore, the

discontinuance of the house implies the discontinuance of worship. It is for that reason that the Civil Code contains many strict rules against the discontinuance of the house. Article 762 provides that "A person who has established a *new house* may abolish it and enter another house. A person who has become the head of a house *by succession cannot abolish such house*, except where permission to do so has been obtained from a Court of law for the purpose of succession to, or the re-establishment of, the main branch of the house, or for any other just cause." If we compare the first with the second clause of the article above cited, we at once see that this provision is made for the purpose of the continuance of worship. Those who establish new houses *have no house-ancestor to worship* and therefore they are at liberty, if so disposed, to abolish such houses, and to become members of other houses by adoption, marriage or any other arrangement. But with those who have *succeeded* to the house-headship, the case is different. They are entrusted with the duty of worship which it is considered the greatest act of impiety to discontinue. But if they belong to *branch* houses, they may abolish them in order to continue or revive the worship of the ancestors of the *main* houses from which their own have sprung.

For the same reason, it is provided in Article 744 that “The legal presumptive heir to the headship of a house is not permitted to enter another house, or establish a new one, except in cases where the necessity arises for the succession to the main branch of the house.” A legal presumptive heir is *heres necessarius*, and to him falls the duty of succeeding to the headship of his house and of upholding the continuity of its worship. For that reason, he or she cannot become a member of another house by marriage, adoption or any other cause, nor found a house of his or her own, except where the more important duty of preserving the continuity of the worship of the main branch of the house renders such a step necessary. Sometimes hardships arise from the operation of this rule. For instance, a male head of a household or a male legal presumptive heir of a house cannot marry the only daughter of the head of another house, owing to the fact that she is the legal presumptive heiress to the headship of the latter house. In such cases the only alternative is to disinherit the heiress according to the provision of the Code, which requires the judgment of a Court of law (Art. 975), and thus enabling her to enter another house by marriage.

§. 5. MARRIAGE.

Marriage is an institution based upon human nature ; but the original cause of its recognition by law must be sought for in Ancestor-worship. The state recognised wedlock, and began to make rules for its protection, because it was regarded as a *means of perpetuating the worship of ancestors*. In the eyes of the old law, it was essential that a family should perpetuate itself for ever, and marriage represented the union of man and woman for the purpose of obtaining a successor to maintain the continuity of Ancestor-worship. It was due to the dead that the descendants should not become extinct. It was a means to an end, and that end was the continuity of the sacra. It was considered one of the greatest misfortunes that could befall a man, that he should die without leaving a son to perpetuate the worship of his ancestors and himself. Mencius (孟子) says. "There are three things which are unfilial, and to have no posterity is the greatest of them." (不孝有三無後爲大) In passing, it may be noted that the other two unfilial things are the encouragement of parents in unrighteousness, and failure to succour parents in poverty and old age. To be without posterity is the greater fault than the other two, because it is an offence against the

whole line of ancestors, and terminates the sacrifice to them. In the "Book of Filial Piety" (孝經) Confucius says "There are three thousand acts which are punished by the Five Punishments, but no crime is greater than filial impiety." (五刑之屬三千而辜莫大於不孝) Therefore, to die without male issue was regarded as the greatest sin that a man could commit against the doctrine of the Chinese philosophy, which has been taught in our country for more than one thousand years. The reason of this doctrine is obvious. The posthumous happiness of the ancestors of a family depended on the proper performance of the family sacra. It was, therefore, the *duty* of every head of a house to marry for the purpose of avoiding the calamity of the family sacra becoming extinct. It was the established principle of our customary law, which is maintained with some modifications in the new Civil Code (Art. 750), that a member of a house must obtain the consent of the head of the family for his or her marriage. The House-law "Ko-riyo" (戶令) of the Taiho Code also required the consent of grand parents, parents and other relatives before the marriage could be celebrated. According to Article 750 of the new Civil Code, if a member of a house marries without the consent of the head of the family, the latter may, within one year from the day of the marriage, exclude him or

her from the house-hold, or if he or she has entered another house by the marriage, forbid his or her return to it in case of dissolution of marriage. As to the consent of parents, the first clause of Article 772 provides : - “ For contracting a marriage, a child must obtain the consent of the parents who are *in the same house*. But this rule does not apply if the man has completed his thirtieth year or the woman her twenty-fifth year.” The consequences of a marriage without the consent of the parents are stated in Articles 783 and 784. The parent may make application to a Court of law for the annulment of the marriage within the period of six months from the time when he or she first became acquainted with the fact of the marriage, or within two years from the date of its registration.

The reason for requiring the consent of the head of the family is, that by the marriage of a male member another member is added to the household ; or in case of marriage of a female member, one member is lost to it, for the wife enters the house of her husband, unless a man marries a female head of a family, or an adopted son marries the daughter of the persons who have adopted him, in which cases the husband enters the house of his wife according to the provision of Article 788. In all cases, marriage brings about a

change in the household, and this is the reason assigned at present for the existence of the rule relating to the permission of the heads of families.

But formerly, there was another, and no doubt *more important*, reason. As marriage was regarded as the means of obtaining a successor to the sacra of the house, the head of the house must guard against any improper alliance,

The consent of the parents in the same house is also required by the new Civil Code, chiefly because the parents, who have the interest of their children at heart, may be relied upon to proffer good advice and to guard against any rash or unsuitable union; and because of the reverence which is due to them from the children. But here, as in the case of the consent of a house-head, the original cause of the rule is different from the reason of its retention. At first, the parents' consent was required, because a son's marriage was the means of obtaining a successor to continue his sacra; and in the case of a daughter, she passed out of the original household, and was initiated into the cult of her husband's house. That it was the supreme duty of a man to marry for the purpose of obtaining the continuator of sacra, may be gathered from the Dialogue of Mencius (孟子). A famous Chinese Emperor Shun (舜), who was noted

for his filial piety, married without obtaining the consent of his parents, for he knew that they would not countenance any union, and he could not marry if he had asked for their consent. Mencius, in justifying the act, said "Shun married without informing his parents because of his anxiety lest he should have no posterity. Superior men consider that his action under the circumstances, should be regarded as if he had informed them." (舜不告而娶爲無後也君子以爲猶告也)

Another rule which existed before the Restoration of 1868 clearly shows in what light marriage was regarded by our old law. Formely, among "Samurai" or military class only the eldest son who was the presumptive heir to the house-headship, or his eldest son who would become the presumptive heir after him, was allowed to contract marriage, and the younger sons could not lawfully marry. It was the duty of every house-head, and his presumptive heir to marry ; but there was no such necessity for the younger sons who had no apparent hope of ever becoming the head of a household. They were consequently called "Heyazumi" (部屋住) or "dwellers in apartments."

Although Chinese laws and philosophy were introduced into Japan in ancient times, the famous Chinese law prohibiting *marriage between person bearing the same clan-name* (同姓不娶) was not adopted in

those of our old Codes which were modelled upon the Chinese digest. The reason of this remarkable deviation from the ordinary course seems to be this ; that an ancestor only *receives the sacra of his blood descendants*, (異姓不祭) and the marriage between persons belonging to the same clan, that is between persons descended from the same ancestor, was, perhaps, rather to be favoured than the alliance with a person of another clan, for the issue of the marriage would be of the unmixed blood of the ancestor. This exception to the general adoption of the Chinese laws appears the more remarkable, by reason of the fact that the prohibition against the adoption of a child from a different clan, which has existed and still exists in Chinese law was included in our old Codes, almost without any modification.

§ 6. DIVORCE.

In the House-Law (Ko-riyo) of the Taiho Code is enumerated the famous Seven Grounds of Divorce (七出之狀). The Code says “ For abandoning a wife, there must be one of the following seven grounds of divorce.”

1. Sterility.
2. Adultery.

3. Disobedience to father-in-law or mother-in-law.
4. Loquacity.
5. Larceny.
6. Jealousy.
7. Bad disease.

If any of these grounds exist, the wife may be abandoned, the husband signing the necessary deed which must be countersigned by the nearest ascendants. If any of these persons cannot write, the mark of the thumb may be made in place of signature. The enumeration of the causes of divorce shows plainly that the *object of marriage was the perpetuation of worship*. The reason of sterility being made the first ground of divorce scarcely needs explanation. The commentators of the Taiho Code say that sterility here does *not* mean actual barrenness, but the *failure of male issue*. The marriage being contracted for a special object, and that object failing, it was justifiable to dissolve the union. A man was, in fact, under a moral obligation to his ancestors to do so.

Adultery is recognised by most nations as a ground of divorce; but the reasons of its recognition differ considerably in ancient and modern legislations. In the eyes of the Taiho Code, it was not the immorality of the act itself, but rather the apprehended danger of the *confusion of blood*, whereby a person not in

reality related to the ancestor might succeed to the worship.

The last of the grounds mentioned in the Taiho Code may be attributed to a similar cause. The hereditary nature of some diseases seems to have been early known, and the fear of ancestor's blood becoming polluted was the chief cause of incurable disease being recognised as a ground of divorce.

According to the new Civil Code, two kinds of divorce are recognised; Consensual and Judicial, the former being effected by the arrangement of parties, while the latter is granted by law on various grounds which are specified in Article 813 of the Code. The majority of the grounds mentioned in the Taiho Code do not find a place in the new Code, and bigamy, adultery, desertion, cruelty or gross insult, condemnation to punishments for certain offences such as forgery, theft, embezzlement, sexual immorality, disappearance from residence etc. are the principal grounds of divorce specified. Besides the grounds already mentioned, a judicial divorce is allowed in a case in which an adopted son has married the daughter of the persons who have adopted him, and they, for some reason, break off the adoption. Under such circumstances, the man is entitled to dissolve the marriage.

From the comparison of the grounds of divorce

mentioned in the Taiho Code and those enumerated in the new Civil Code, it will be seen that the law of divorce has undergone a great change, and the present law has only a slight connection with Ancestor worship, except the last ground, which, as will be explained when I come to speak of adption, derives its origin from Ancestor-worship.

§ 7. ADOPTION.

Perhaps in no department of jurisprudence is the relation between Ancestor-worship and law more clearly shown than in the law of adoption. Failing male issue, adoption was the most general method of providing for the continuity of Ancestor-worship. It was, as Fustel de Coulanges says, “a final resource to escape the much dreaded misfortune of the extinction of a worship.” Death without an heir was, as I have said above, considered to be the greatest filial impiety. So, in case of the failure of male issue, it was considered the duty of a house-head to acquire a son by adoption.

Many of the European legislations which allow adoption limit the *age of the adoptor*, the majority of them, such as French, Italian, Austrian and German

codes, fixing the lowest limit of an adoptor's age at fifty. The House Law of our Taihō Code provides that a person "*having no child*" may adopt one from among his *relatives within the fourth degree of kinship*, whose age does not exceed that which might have been attained by a son of the adoptor's own body. According to some commentators of the Code "*having no child*" here means that the adoptive father should have reached the age of *sixty* years or the adoptive mother *fifty* years, without having *male issue*. Now, in regard to limiting the age of an adoptor, there is an apparent agreement between modern European legislations and our ancient Code ; but if we look closely into the object of that limitation, we shall find that the resemblance is only superficial. European laws allow adoption chiefly for the *consolation of a childless marriage*, and as long as there is a hope of having issue, there is no necessity for allowing adoption. But our old Code looked at the matter from another point of view. As long as any hope of having a male issue of blood, that is the direct descendant of his ancestor existed, the head of a house should not permit a person of more distant relationship to become the successor to the sacra. This rule took another form during the Shogunate of the Tokugawa family. In order to prevent the extinction of a house by the

sudden death of a house-head who had no son, any man over the age of *seventeen* years was allowed to adopt a son. A person between the ages of seventeen and fifty years could even adopt a son on his death-bed; and this event was called "Kiu-yōshi" (急養子) or "quick adoption." But if he failed in his duty of providing for the continuity of his house until after he had attained the age of fifty, he was threatened with the dreadful consequence of the extinction of his house in the event of his dying without male issue, for "quick adoption" was not permissible after the age of fifty. If he did not provide for the succession to the ancestor's sacra early in life, even if he still had the hope of male issue, he incurred the risk of the extinction of his house and the forfeiture of his feudal property. The prohibition of death-bed adoption is not in force to-day, and has not, therefore, been incorporated in the new Code. On the contrary, Article 848 allows a person to make an adoption even by testament. The old and the new law seem on this point to contradict each other, but the spirit of both is the same. They both had the perpetuation of house for their object and the difference between them consists in this, that the one wished to make people provide for the succession early in life by attaching severe penalties to the neglect of that precaution, while

the other desires to avoid the chance of a house-worship becoming extinct by freely countenancing adoption.

With regard to the *lower limit of the age of the adoptor*, both the laws of the Tokugawa Shogunate and our new Civil Code agree in giving the widest scope to adoption. The Taihō Code fixed the limit at *sixty*, as I have said, but the laws of the Tokugawa Shoguns allowed and encouraged any childless person over the age of *seventeen*, and even, by special permission, heads of houses under that age, to adopt a successor ; and Article 837 of the new Civil Code allows any person who has attained his *majority* to adopt another person. European laws allow adoption only in old age, because it is intended for the consolation of childless marriages, while Japanese law countenances adoption by young people, in order that the possibility of a worship becoming extinct may be obviated.

As to the *difference of ages* which must exist between the adoptor and the adopted, many European legislations, following the rule of the Roman law “*adoptio naturam imitatur*,” requires that the adoptor should be older than the adopted at least by the age of puberty. For instance, German, Austrian and Italian laws require that there shall be at least the difference of *eighteen* years, and the French Civil Code requires the difference

of *fifteen* years between them. But in this respect, Japanese law does not strictly follow the principle of the imitation of nature, in order to give wider freedom to adoption and greater security for the continuance of worship. The Taihō Code required that the adoptor and the adopted should be “fit to be father and son” (於昭穆合者); and the commentators of the Code say, that as a person over fifteen years of age was qualified to marry in accordance with that Code, “fit to be father and son” means that there should exist at least the difference of *fifteen* years. But this rule was not followed in later days. In the time of the Tokugawa Shogunate, the adopter was only required to be older than the adopted, but frequent deviations were made to this rule by special permission, notably a decree allowing a house-head under seventeen years of age to arrange an adoption, and another by which even an older person might be adopted as a son. Article 838 of the new Civil Code provides that a person cannot adopt one older than himself, although he may adopt any person who is younger than himself.

As to the *age of the adopted*, no limit has been fixed in our law. Even a baby can be adopted, and it even frequently happens that two families agree to adopt an expected child as soon as it is born. Article 843 of the Civil Code runs as follows:—“If the

person to be adopted is under fifteen years of age, the parents in the same house may consent to the adoption on his or her behalf." In this respect again, there is a difference between our law and that of European countries, for, according to the latter, adoption is an act of parties, and as a general rule a person under the age of consent cannot be adopted.

That the object of adoption was the perpetuation of Ancestor-worship may also be inferred from the old strict rule that *only a kinsman could be adopted as a son* (異姓不養). The Taihō Code limited it to within the kindred of the *fourth degree*. From the remains of the Taihō Criminal Code (戸婚律), which have come down to us, we know that a penalty of one year's penal servitude was inflicted upon one who adopted a son from a different clan, and one of fifty floggings for anybody who assisted him. This prohibition against the adoption of a person not related in blood, seems to have been observed till the time of the Tokugawa Shogunate. It derives its origin from the belief that "the spirit does not receive the offerings of strangers." There is a law enacted in the 1st year of Genna (元和, 1615 A.D.) that adoption must be made from persons of the same clan-name, that is from the descendants of the ancestor of the adopter. This rule, as well as the prohibition of "quick adoption" before mentioned, was so strictly

enforced that many feudal lords' houses became extinct on account of the failure of heirs ; and in consequence their estates were forfeited, and thousands of their vassals or "samurai" lost their feudal salary. The result was that those "Ronin" (浪人) or members of the military class who had lost their feudal salary, and could not, and would not if they could, earn a living by agriculture or commerce, became seditionaries. They often incited insurrections and joined in civil commotions which were very frequent in the beginning of the Tokugawa Shogunate. The government soon saw that the relaxation of this strict law of adoption was necessary in order to maintain peace in the country. In the 4th year of Keian (慶安) (1651 A.D.) soon after the famous plot of Yui-no Shōsetsu (由井正雪) to overthrow the Tokugawa Shōgunate, an important modification was introduced into the law of adoption. From that time, adoption from different clans was not strictly forbidden, but the amended law enjoined that a man who had no son should adopt one from the same clan, although in case of failure of a suitable person, permission might be obtained to adopt a person of different clan. Although the law of adoption was revised and amended several times, this rule remained substantially the same more than two hundred years, till the end of the Tokugawa Shōgunate. The rigorous

rule of limiting an adoption only to persons of the same clan-name practically lost its force by the introduction of the just-mentioned proviso, and it has not, therefore, been adopted in the new Code.

Another requirement of adoption, which is to be found in the laws of many countries, is the absolute *failure of male issue*. The House-law of the Taihō Code only allowed adoption provided that a man had no son. This rule has been uniformly observed from ancient times down to the present day, and the new Civil Code also retains that rule with, however, certain modifications. Article 839 provides that “A person having a male child who is the legal presumptive heir to the headship of a house is not allowed to adopt a son. But this rule does not apply to the case of adopting a son for the purpose of making him the husband of a daughter of the adoptor.” The object of this rule is clear from what has been pointed out before. There is no necessity for adopting a stranger, when there is a son to succeed to the house-headship.

There is one form of adoption called “Muko-yōshi” (婿養子) or “adoption of son-in-law.” As has been already stated, the law considered a man childless, even though he had a daughter. Males were the only continuators of worship. A common form of expression in offering congratulations upon the birth of another

person's child among us is "Kotoni go-nanshi de," "I congratulate you the more, as the child is a son." A mother who has given birth to a son is praised by her relatives and friends for her "meritorious deed," (手柄 *tegara*) in having brought forth a successor to the house ; for formerly it was a strict rule that only males could become house-heads, and perpetuators of the cult. Those who had daughters only were, therefore, obliged to adopt a son ; but it was necessary for the blood of the ancestor to be, if possible, *continued in the house*. In such cases, a house-head selects a person as his adopted son who is fit to be his daughter's husband. If adoption and marriage take place at the same time, it is called "*muko-yōshi*." This form of adoption is very common and is recognized by the new Civil Code (Art. 839 C.C. and Art. 102 of the Law of Registration.) But the marriage of the adopted son and the daughter of the adoptive father may take place subsequently to the act of adoption, for, although Article 769 of the Civil Code prohibits marriage between collateral blood relations within the third degree of kinship, collateral relationship of brothers and sisters *by adoption* is no bar to their marriage. A person who has a daughter frequently adopts a son with the expectation that the adopted son should marry his daughter when they grow up, and

in most cases the parents' wishes are fulfilled. In cases where the parties do not wish to marry, dissolution of adoption very often takes place, either, because the adopted son thinks it his duty to leave the house, so that the daughter may remain in it and marry a second adopted son, thus preserving the blood of the ancestor in the house; or, because the adoptive father desires the dissolution from the same motive.

The rules as to the necessity of obtaining the consents of house-head and parents, and the consequences of the violations of those rules being nearly the same as those in the case of marriage, I do not consider it necessary to repeat them here. (Art. 750, 845, 857 Civil Code.)

The effect of adoption is that the adopted son acquires the same position as a natural-born legitimate child (Article 860, Civil Code). He relinquishes the original house and worship and enters into the house of the adoptor, taking the house-name and clan-name of the latter (Article 860, 861, Civil Code). The consequence of his acquiring the status of an actual son and entering the house of the adoptive parent is, that he becomes the legal presumptive heir to the headship of the house.

From what I have stated, it may, I think, be laid down as a general rule that *adoption had its origin in*

Ancestor-worship; and the stronger the belief in that practice among the people, the wider is the scope allowed for adoption by law.

§ 8 THE DISSOLUTION OF ADOPTION

The law relating to the dissolution of adoption also shows a close connection between the institution of adoption and Ancestor-worship. Two kinds of dissolution are recognized by the Civil Code; the one, Dissolution by Consent, and the other, Dissolution by Judicial Decree.

Adoption may be dissolved for any cause, provided that the parties mutually agree, but for its compulsory dissolution an action must be brought by one of the parties on the basis of one of the grounds specified in Article 866 of the Civil Code. I will only mention the two grounds for dissolution, which have a direct bearing on Ancestor-worship. One of them is that “if the adopted person commits a grave fault of a nature to *disgrace the family-name* or ruin the house-property” (家産) of the adoptive house, the adoptive parent may bring an action for dissolution of the adoptive tie; the reason for this rule being that the name of

the ancestor's house is sacred, and it is not only his legal right but his moral and religious duty to dissolve the tie. The adoptive house is not the house of the adoptor alone, nor is it the house of the adopted, but it is the house which the adoptor *inherited from his ancestor and will leave to his descendants*. It is the duty of every house-head to preserve it, and leave it, unblemished.

Another ground for dissolution mentioned in the Code has reference to "muko-yōshi" or "adoption of son-in-law," and to the case of the marriage of an adopted son with Kajo (家女) or the "house-daughter." If the adopted son married the daughter of the adoptor, and divorce or annulment of that marriage takes place, an action for the dissolution of adoption may be brought by one of the parties (Article 866, Civil Code). The reason of this last rule is that if the adopted son, who is in most cases the legal presumptive heir, remains in the adoptive house and perhaps takes a second wife from another family, the true blood of the ancestor will not be continued in the house. The "adoption of son-in-law", as I have said before, was a custom based on the desire to retain the true blood of the ancestor in the family, and if the marriage of the "house-daughter" with the adopted son is dissolved, the intention of the adoptor is thereby thwarted. This

rule corresponds to that relating to dissolution of marriage which allows judicial divorce, when, in the case of "adoption of son-in-law," or in a case when the adopted son is married to the "house-daughter", the dissolution of adoption takes place.

§ 9. SUCCESSION.

The law of succession seems to have passed through *three stages of evolution*; firstly, the *succession of sacra*, secondly the *succession of status* and thirdly the *succession of property*. Each stage of development, however, did not form a distinct period in itself, but the later was gradually evolved out of the earlier by the process of differentiation. In ancient times the duty of performing and continuing the *worship* rested on the head of a house, and the property of a house exclusively belonged to him. He exercised *authority* over the members of his house, because he was the *continuator of the ancestral sacra*, and, in one sense, the representative of the ancestor. He owned his *property* because it was left by the ancestor, and the *authority and property of a house-head rested on the worship of ancestors*. In those times, continuation of

house-worship formed the sole object of inheritance. But in the course of time, the authority of the house-head which at first comprehended both power over the members of the house and rights over house-property, came to be considered by itself in law. Afterwards the two constituent elements of the authority of the house-head gradually began to be separately considered, until, at last, property came to be regarded as a distinct object of inheritance.

Now, in the Succession Law “Keishi-riyo” (繼嗣令) of the Taihō-Code (701 A.D.) there is a provision that if a presumptive heir of a noble family is not fit to succeed to “the important duty” (不任承重) owing to the committal of crime or to disease, he may be disinherited and another presumptive heir may be substituted. The official commentary to this Code “Riyō-no-gigé” (令義解) says “to *succeed to the important duty*” means “to succeed a father and *inherit the sacra*, for the matter of worship is the most important.” It appears that, at this time, the continuation of Ancestor-worship was the principal object of succession. Since the middle ages, the word “*Katoku Sozoku*” (家督相續) or “the succession to house-authority” was used for succession, and in the feudal period, especially in the time of Tokugawa Shōgunate, succession represented the continuity of the *status of house-headship*.

In later times "*Katoku*" which literally means "*house-authority*" was very frequently used for "*house-property*" which formed the object of inheritance just as the word "*familia*" in Roman law was often used to designate property. This transition of the use of the word "*Katoku*" indicates that the law of succession was gradually passing from the second to the third stage referred to.

Our present law represents the stage of transition from the period of the succession of status to the succession of property. The new Civil Code recognizes two kinds of succession; Succession to house-headship or "*Katoku sozoku*," and Succession to property or "*Isan sozoku*" (遺産相続). But there are many rules still remaining, which show that the foundation of the succession to the house-headship is the necessity of continuing the worship of ancestors. Article 987 contains the following provision :-

"The ownership of the records of the genealogy of the house, the articles used for house-worship and the family tombs constitutes the special right of succession to the headship of a house."

This important provision means that those things which are specified therein form the special objects of inheritance. They cannot be bequeathed away, nor can they be seized for debts.

Four kinds of heirs to the house-headship are recognized by the new Civil Code, "*the Legal Heir*," "*the Appointed Heir*," "*the Chosen Heir*," and "*the Ascendant Heir*." The legal heir who comes first in the order of succession, is the lineal descendant of a house-head, who *is at the same time a member of his house*. Among lineal descendants, nearest kinsmen are preferred to more remote, males to females, and legitimate children to illegitimate, seniors in age being always accorded priority when they are equal in other respects (Art. 970, Civil Code). Modern writers on law usually give as a reason for the preference of nearer to remoter kinsmen that the order of succession is determined by the *degree of affection* which the deceased is presumed to have entertained towards his relatives, and also by the presumed intention of the person who dies intestate as to the disposition of his property. For the preference of males over females *feudal reasons* are often given. These reasons also form the principal basis of our present law. But here again, the reasons for the *existence* of the rule and its *origin* are not the same. Originally, the *nearest in blood to the ancestors worshipped*, and their male descendants were preferred, because they were considered to be the fittest persons to offer sacrifices to the spirits of ancestors.

“The legal heirs” are *heres necessarius* and are *not allowed to renounce* the succession; whilst other kinds of heirs are at liberty to accept or renounce the inheritance, or to accept it with the reservation, that they shall not be liable for the debts of their predecessors. It is the bounden duty of descendants who are legal heirs to accept the inheritance and continue the sacra of the house. The house-heads cannot bequeath away from them more than one half of the property (Art. 1130, Civil Code), nor can they disinherit them, unless there exists one of the grounds mentioned in Article 975 of the Civil Code. The causes especially mentioned there are: - (1) ill-treatment or gross insult to the house-head, (2) unfitness for house-headship on account of bodily or mental infirmities, (3) sentence to punishment for an offence of a nature *disgraceful to the name of the house* and (4) interdiction as a spendthrift.

For these causes, a house-head may bring an action against his legal presumptive heir with a view to depriving him of the rights of succession. All of the grounds mentioned in the Code relate directly or indirectly to Ancestor-worship and the necessity of maintaining intact the reputation and property of the house.

In case there is no legal presumptive heir to a house-head, he may appoint an heir, either in his lifetime or by his will. But this appointment ceases to be valid

when he obtains a child in the course of nature or by adoption, for the latter will become his legal presumptive heir (Art. 979 Civil Code).

If, at the time of the death of a house-head, there is neither legal heir, nor an appointed heir, the father of the deceased, or, if there is no father, or if he is unable to express his intention, the mother, or, if there are no parents or both are unable to express their intention, the family council chooses an heir from among the members of the house according to the following order :- 1st, the surviving wife, if she is a "*house-daughter*," 2nd brothers, 3rd sisters, 4th the surviving wife, who *is not a house-daughter*, and finally 5th the lineal descendants of brothers and sisters (Art. 982, Civil Code).

Now, in this also, the desire for preserving the blood of ancestors will be seen from the order in which the heir is chosen. The surviving consort of the last house-head comes first in the order of succession provided that she is a "*house-daughter*," but fourth if she is not the descendant in blood of an ancestor of the house.

If there is neither a legal, nor appointed, nor chosen heir, then the nearest lineal ascendant of the last house-head succeeds, males being always preferred to females between persons standing in the same degree of relationship. (Art. 984, Civil Code).

If there are no other heirs above mentioned the family council must choose one from among other relatives of the last house-head or members of his house, househeads of branch-house or members of principal or branch houses. If none of the persons above mentioned be existing or able to succeed, then as a last resort, the family council may choose an heir from among other persons (Art. 985, Civil Code).

From the foregoing enumeration of the various kinds of heirs, it will be seen that the law takes every precaution against the contingency of a house becoming extinct; for, with the extinction of the house, the worship of its ancestors would come to an end.



APPENDIX.

I subjoin the translation of some articles of the "Ordinance relating to the Marriages in the Imperial Household" (皇室婚嫁令) which was published on the 25th of April 1900, as they will show the close connection which exists between Ancestor-worship and marriage.

ARTICLE III.

When the agreement of the Imperial Marriage is made, it shall be reported to Kashiko Dokoro, Kwōrei Den and Shin Den;¹ and the Imperial Messenger for offering sacrifices shall be sent to Jingū², and to the Graves of Jimmu Tennō,³ the late Imperial Father and the late Imperial Mother respectively.

ARTICLE VI.

The Imperial Marriage shall be reported to Kashiko Dokoro, Kwōrei Den and Shin Den on the day when the ceremony takes place.

ARTICLE VII.

The ceremony of the Imperial Marriage shall be performed before the Temple of Kashiko Dokoro, according to the forms specially prescribed.

1. Kashiko Dokoro is the Temple of the First Imperial Ancestor, Amaterasu Ō-mi-kami; Kwōrei Den is the Temple of all other Imperial Ancestors; and Shin Den is the Temple dedicated to the worship of other deities. 2. The Temple of the First Imperial Ancestor at Ise. 3. The First Emperor.

ARTICLE IX.

The Emperor and the Empress shall present themselves to the Temples of Kwōrei Den and Shin Den when the ceremony of the Imperial Marriage is finished.

ARTICLE XII.

The Emperor and the Empress shall present themselves to Jingū and to the respective Graves of Jimmu Tennō, the late Imperial Father and the late Imperial Mother after the ceremony of the Imperial Marriage is performed.

ARTICLE XV.

The ceremony of marriage of Kwō Taishi,¹ Kwō Taison,² Shinnō³ or Wō⁴ shall be performed before the Temple of Kashiko Dokoro, according to the forms specially prescribed.

ARTICLE XVIII.

The provisions of Articles III, IV, V, VI, IX, XI and XII shall have corresponding applications to the marriages of Kwō Taishi and Kwō Taison.

ARTICLE XIX.

The provisions of Articles V and IX shall have corresponding applications to the marriages of Shinnō, and the provision of Article IX shall have corresponding application to the marriages of Wō.

1. The Imperial Son who is Heir-apparent. 2. The Imperial grandson who is Heir-apparent. 3. Imperial male descendants, from Imperial sons to Imperial great-great-grandsons. 4. Imperial male descendants from the fifth generation downwards.

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